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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 150401329-5659-02]

RIN 0648-BF00

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish
Fisheries; Framework Adjustment 9**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing regulations consistent with Framework Adjustment 9 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action will further enhance catch monitoring and address discarding catch before it has been sampled by observers (known as slippage) in the Atlantic mackerel fishery. Framework 9 implements slippage consequence measures, and a requirement that slippage events be reported via the vessel monitoring system. For allowable slippage events, due to safety, mechanical failure, or excess catch of spiny dogfish, vessels must move 15 nm (27.8 km) from the location of the slippage event. For non-allowable slippage events, due to reasons other than those listed previously,

vessels must terminate their fishing trip. Slippage events have the potential to substantially affect analysis or extrapolations of incidental catch, including river herring and shad, and these measures are designed to address this issue.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the framework document, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The framework document is also accessible via the Internet at:

<http://www.greateratlantic.fisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281-9224.

SUPPLEMENTARY INFORMATION:

Background

NMFS implemented measures to improve catch monitoring of the mackerel, squid, and butterfish fisheries through Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) (79 FR 10029, February 24, 2014). The focus of Amendment 14 was to improve evaluation of the incidental catch of river herring (alewife and blueback

herring) and shad (American shad and hickory shad), and to address incidental catch of river herring and shad. NMFS disapproved three measures that were initially included in Amendment 14 including: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a recommendation of 100-percent observer coverage on midwater trawl vessels and 100-, 50-, and 25-percent observer coverage on bottom trawl mackerel vessels, with the industry contributing \$325 per day toward observer costs.

Currently, through Amendment 14 regulations, slippage events are prohibited for vessels issued a limited access mackerel permit or a longfin squid/butterfish moratorium permit and carrying a NMFS-approved observer except in circumstances which allow slippage events including: Safety; mechanical failure; and excess catch of spiny dogfish. Additionally, following a slippage event, vessels are currently required to submit a Released Catch Affidavit within 48 hours of the end of the fishing trip. In response to the disapproval of the slippage measures in Amendment 14, the Mid-Atlantic Fishery Management Council developed Framework Adjustment 9 to the Atlantic Mackerel, Squid, and Butterfish FMP to further enhance catch monitoring and to address slippage in the Atlantic mackerel fishery. Framework 9, through this final rule, adds slippage consequence measures and slippage reporting requirements to build upon the current measures and to address monitoring the catch of river herring and shad. On May 19, 2015, NMFS published a proposed rule for Framework 9 management measures (80 FR 28575); the public comment period for the proposed rule ended on June 18, 2015.

Final Action

Framework 9 requires Tier 1, 2, and 3 mackerel vessels on observed trips to move 15 nm (27.8 km) following an excepted slippage event, which includes safety, mechanical failure, or excess catch of spiny dogfish. These vessels are also required to terminate a fishing trip and immediately return to port following a non-excepted slippage event, which would be due to any reason other than those listed above. In addition to submitting a Released Catch Affidavit, vessels carrying an observer are required to report slippage events through the vessel monitoring system daily catch report for mackerel and longfin squid.

Comments and Responses

NMFS received three comments in response to the proposed rule for this action. Two were from industry groups, including Garden State Seafood Association (GSSA) (a New Jersey fishing industry advocacy group), and Seafreeze (a Rhode Island fishing company and seafood dealer). One comment was from the Herring Alliance, an environmental advocacy group.

Comment 1: GSSA and Seafreeze both commented in opposition to the 15-nm (27.8-km) move along provision for allowable slippage events. Both commenters suggested that this provision causes significant safety and economic implications and are not known to have a positive impact on the river herring resource. Seafreeze noted that the 15-nm (27.8-km) move along provision causes economic hardship because the vessel may have to move away from the targeted resource and lose the opportunity to harvest fish.

Response: Due to low observer coverage in this fishery and the low rate of slippage events, very few trips would likely be impacted by this slippage consequence and therefore the economic impact of this provision would be minimal. Additionally, NMFS does not expect that moving 15 nm (27.8 km) following an allowable slippage event will by itself cause any safety

concerns. If the net is slipped due to the safety of the crew, then the vessel would likely be going back to port or to another area to avoid the safety issue. The intent of the slippage consequence measures are to discourage slippage events in order to allow catch to be fully accounted for by observers, which will provide better information on river herring and shad.

Comment 2: The Herring Alliance commented in support of all the proposed management measures but noted that these measures would be more effective if there is an increase in observer coverage in the Atlantic mackerel fishery.

Response: NMFS will be implementing the Framework as proposed. NMFS and the Councils are currently developing additional measures to increase observer coverage in the Atlantic mackerel fishery.

Changes from the Proposed Rule

This final rule contains an additional change that would reinstate regulations that were inadvertently removed. This reinstated regulation, at § 648.24(b)(6), describes the river herring and shad catch cap in the Atlantic mackerel fishery. This change in the regulations was identified, described, and made available for public comment in the proposed rule for the 2014 Atlantic mackerel, squid, and butterfish specifications (79 FR 1813, January 10, 2014). The fishery is already operating under the river herring and shad cap, this rule is simply reinstating this regulatory text.

This final rule also contains additional regulation changes that were mistakenly omitted in the 2015-2017 Atlantic mackerel, squid, and butterfish specifications final rule (80 FR 14870, March 20, 2015). One regulation change, in § 648.14(g)(2)(ii)(G), would prohibit all vessels with a valid mackerel permit from fishing for, possessing, transferring, receiving, or selling more

than 20,000 lb (9.08 mt) of mackerel per trip or per day after 95 percent of the river herring and shad catch cap has been harvested. Another regulation change, in §§ 648.22(b)(3)(v)-(vii) and 648.24(c)(1), would eliminate the three-phased butterfish management season. These measures were identified, described, and made available for public comment in the proposed rule for the 2015-2017 Atlantic mackerel, squid, and butterfish specifications (79 FR 68202, November 14, 2014).

This final rule also contains changes to the wording and format of the regulatory text for the measures included in Framework 9. This includes revising the definition of “Slippage in the Atlantic mackerel and longfin squid fisheries” in § 648.2, as well as wording and format changes made to §§ 648.11(n)(3) and 648.14(g)(2)(vi)-(x) to make consistent with proposed regulations for Framework Adjustment 4 to the Atlantic Herring FMP which includes similar management measures to this action. All of these changes are intended to clarify the purpose of these measures and ensure compliance.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator (AA) has determined that this framework adjustment is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Council prepared an EA for Framework 9, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available upon request (see **ADDRESSES**).

This final rule is authorized by 50 CFR part 648 and has been determined to be not

significant for purposes of Executive Order 12866.

This action contains collection-of-information requirements subject to the paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0679. Framework 9 requires all limited access mackerel vessels carrying an observer to report all slippage events on the VMS mackerel and longfin squid daily catch report. This information collection is intended to improve monitoring the catch of river herring and shad in the Atlantic mackerel fishery. The burden estimates for these new requirements apply to all limited access mackerel vessels. Time and cost burdens that were previously approved through Amendment 14 and OMB Control Number 0648-0679, include estimated time of 5 minutes to complete daily catch reports, for a total time burden of 264 hours. In a given fishing year, NMFS estimates that the additional reporting requirements included in Framework 9 will not cause any additional time or cost burden from that which was previously approved. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provisions of the law, no person is required to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA, included in the preamble of this final rule, in support of the management measures in this action. The FRFA describes the economic impact that this final rule, along with other non-preferred

alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summaries in the IRFA, a summary of the significant issues raised by the public in response to the IRFA, and NMFS's responses to those comments. A copy of the IRFA, RIR, and the EA are available upon request (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Two of the public comments raised general concerns on the economic impact of the rule on affected entities, but did not quantify those concerns or relate these issues to the IRFA. Those comments, and NMFS's responses, are contained elsewhere in this preamble and are not repeated here. No changes were made in the final rule as a result of these comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

This rule applies to Atlantic mackerel limited access permits. Based on permit data for 2013, 150 separate vessels hold mackerel limited access permits, 114 entities own those vessels, and, based on current Small Business Administration (SBA) definitions, 107 of these are small entities. Of the 107 small entities, 4 had no revenue in 2013 and those entities with no revenue are considered small entities for the purpose of this analysis. All of the entities that had revenue fell into the finfish or shellfish categories, and the SBA definitions for those categories for 2014 are \$20.5 million for finfish fishing and \$5.5 million for shellfish fishing. Of the entities with revenues, their average revenues in 2013 were \$1,201,419. 70 had primary revenues from finfish fishing and 33 had their primary revenues from shellfish fishing.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains collection-of-information requirements subject to the PRA that have been approved by the OMB under Control Number 0648-0679.

Framework 9 requires all limited access mackerel vessels carrying an observer to report all slippage events on the VMS mackerel and longfin squid daily catch report. This information collection is intended to improve monitoring the catch of river herring and shad in the Atlantic mackerel fishery. The burden estimates for these new requirements apply to all limited access mackerel vessels. Time and cost burdens that were previously approved through Amendment 14 and OMB Control Number 0648-0679, include estimated time of 5 minutes to complete daily catch reports, for a total time burden of 264 hours, and estimated cost of \$0.60 per transmission of daily catch reports, for a total public cost of \$1,901. In a given fishing year, NMFS estimates that the additional reporting requirements included in Framework 9 will not cause any additional time or cost burden from that which was previously approved.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes

This action is not expected to have more than minimal impact on the affected small entities compared to recent operation of the fishery (2011-2013, and 2014 landings to date appear similar to 2013). First, the primary impact should only be that vessels will not slip catches before observers have a chance to observe/sample them, which should have almost no economic impact on vessels. Slippage for reasons besides safety, mechanical issues, and spiny dogfish are already prohibited, and this proposed action would require vessels to move 15 nm (27.8 km) before fishing again if a slippage for those excepted reasons occurs (vessels could not fish within 15 nm (27.8 km) of the slippage event for the remainder of the trip). Total small entity mackerel revenues over 2011-2013 averaged \$2.0 million, for an average of approximately

\$19,000 per affected small entity (107), compared to their average revenues of \$1,201,419 in 2013 as described above. Given the small relative value of mackerel for most affected entities, the infrequency of slippage, and given the consequence of excepted slippages is only to move 15 nm (27.8 km), it seems likely that the economic impacts should be minimal for affected small entities. This is especially true since only a small portion of trips are observed, and the measures only apply to observed trips.

If slippages have been masking higher river herring and shad landings, it is possible that prohibiting slippages could lead to the mackerel fishery closing earlier (because of the river herring and shad cap) than it otherwise would if more slippages were occurring. However, given the very low mackerel catches in recent years (less than 20 percent of the quota), it is more likely that catch increases might be limited rather than actually having decreased catches, so small entities should not be more than minimally impacted compared to recent fishery operations. In addition, if vessels are prohibited from targeting mackerel due to the cap, they will likely partially mitigate any foregone revenue by fishing for other species (e.g. squid, butterfish, herring, etc.).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 6, 2015

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 648 are amended as follows:

15 CFR Chapter IX

**PART 902--NOAA INFORMATION COLLECTION REQUIREMENT UNDER THE
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C 3501 *et seq.*

2. In § 902.1, amend the table in paragraph (b), under the entry for “50 CFR” by revising the entry for “§ 648.11” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR Part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
648.11.....	-0202, -0546, -0555, and -0679
* * * * *	

50 CFR Chapter VI

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.2, the definition for “Slippage in the Atlantic mackerel and longfin squid fisheries” is removed and a definition for “Slip(s) or slipping catch in the Atlantic mackerel and longfin squid fisheries” is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Slip(s) or slipping catch in the Atlantic mackerel and longfin squid fisheries means discarding catch from a vessel issued an Atlantic mackerel or longfin squid permit that is carrying a NMFS-approved observer prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-approved observer after the catch is onboard. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-approved observer, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

* * * * *

5. In § 648.11, paragraphs (n)(3)(i) introductory text, (n)(3)(i)(B), and (n)(3)(ii) are revised and paragraphs (n)(3)(iii) and (iv) are added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(n) * * *

(3) * * *

(i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid/butterfish moratorium permit may slip catch, as defined at § 648.2, except in the following circumstances:

* * * * *

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

* * * * *

(ii) If a vessel issued any limited access Atlantic mackerel permit slips catch, the vessel operator must report the slippage event on the Atlantic mackerel and longfin squid daily VMS catch report and indicate the reason for slipping catch. Additionally, vessels issued a limited Atlantic mackerel permit or a longfin squid/butterfish moratorium permit, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) If a vessel issued a limited access Atlantic mackerel permit slips catch for any of the reasons described in paragraph (n)(3)(i) of this section, the vessel operator must move at least 15 nm (27.8 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.8 km) from the slippage event location for the remainder of the fishing trip.

(iv) If catch is slipped by a vessel issued a limited access Atlantic mackerel permit for any reason not described in paragraph (n)(3)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

6. In § 648.14, paragraph (g)(2)(ii)(G) is added, paragraphs (g)(2)(vi) and (vii) are revised, and paragraphs (g)(2)(viii), (ix), and (x) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(G) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 20,000 lb (9.08 mt) of mackerel per trip; or land, or attempt to land more than 20,000 lb (9.08 mt) of mackerel per day after 95 percent of the river herring and shad cap has been harvested, if the vessel holds a valid mackerel permit.

* * * * *

(vi) Slip catch, as defined at § 648.2, unless for one of the reasons specified at § 648.11(n)(3)(i) if issued a limited access Atlantic mackerel permit, or a longfin squid/butterfish moratorium permit.

(vii) For vessels with a limited access Atlantic mackerel permits, fail to move 15 nm (27.8 km), as required by § 648.11(n)(3)(iii).

(viii) For vessels with a limited access Atlantic mackerel permit, fail to immediately return to port as required by § 648.11(n)(3)(iv).

(ix) Fail to complete, sign, and submit a Released Catch Affidavit if fish are released pursuant to the requirements at § 648.11(n)(3)(ii).

(x) Fail to report or fail to accurately report a slippage event on the VMS mackerel and longfin squid daily catch report, as required by § 648.11(n)(3)(ii).

* * * * *

7. In § 648.22, paragraphs (b)(3)(v) through (vii) are revised and (b)(3)(viii) is removed.

The revisions read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

* * * * *

(b) * * *

(3) * * *

(v) The butterfish mortality cap will be based on a portion of the ACT (set annually during specifications) and the specified cap amount will be allocated to the longfin squid fishery as follows: Trimester I – 43 percent; Trimester II – 17 percent; and Trimester III – 40 percent.

(vi) Any underages of the cap for Trimester I that are greater than 25 percent of the Trimester I cap will be reallocated to Trimester II and III (split equally between both trimesters) of the same year. The reallocation of the cap from Trimester I to Trimester II is limited, such that the Trimester II cap may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of the cap for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of the cap for Trimester I and II will be subtracted from Trimester III of the same year.

(vii) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct

a detailed review of fishery performance relative to the butterfish ACL in conjunction with review for the mackerel fishery, as outlined in this section.

* * * * *

8. In § 648.24, paragraph (b)(6) is added and paragraphs (c)(1)(i) through (iii) are removed.

The revisions read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(6) *River herring and shad catch cap.* The river herring and shad cap on the mackerel fishery applies to all trips that land more than 20,000 lb (9.08 mt) of mackerel. NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator project that 95 percent of the river herring/shad catch cap has been harvested. Following closures of the directed mackerel fishery, vessels must adhere to the possession restrictions specified in § 648.26.

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